Supreme Court, U.S.
FILED
FEB 17 1972
E. ROBERT SEAVER, CLERK

No. 71-1016

IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

FEDERAL POWER COMMISSION, *Petitioner*

v.

LOUISIANA POWER & LIGHT COMPANY, ET AL.
(The Collateral Proceeding)

FEDERAL POWER COMMISSION, *Petitioner*

v.

LOUISIANA POWER & LIGHT COMPANY, ET AL.
(The Curtailment Proceeding)

RESPONSE OPPOSING MOTION FOR EXPEDITED CONSIDERATION

THOMAS G. JOHNSON
DAN A. BRUCE
Attorneys for Shell Oil Company
One Shell Plaza
P. O. Box 2463
Houston, Texas 77001

February 17, 1972

Alpha Law Brief Co., One Main Plaza, No. 1 Main St., Houston, Texas 77002

No. 71-1016

IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

FEDERAL POWER COMMISSION, *Petitioner*

v.

LOUISIANA POWER & LIGHT COMPANY, ET AL.
(The Collateral Proceeding)

FEDERAL POWER COMMISSION, *Petitioner*

v.

LOUISIANA POWER & LIGHT COMPANY, ET AL.
(The Curtailment Proceeding)

RESPONSE OPPOSING MOTION FOR EXPEDITED CONSIDERATION

Shell Oil Company, an intervenor before both the Federal Power Commission and in the Fifth Circuit Court of Appeals in the so-called "curtailment proceeding,"[1]

1. The lead case in the Fifth Circuit seeking review of the Federal Power Commission's opinions in the curtailment proceeding is *Louisiana Power & Light Co., and New Orleans Public Service, Inc. v. Federal Power Commission,* Case No. 71-3429.

pursuant to Rule 35 of the Rules of The Supreme Court, opposes the Motion For Expedited Consideration filed herein by the Solicitor General on behalf of the Federal Power Commission. The motion asked that responses to the petitions for certiorari (which were attached to the motion) be required to be filed by February 28, 1972. The motion and petitions for certiorari were filed February 7, 1972 and were served on Shell by mail on February 10, 1972.

Rule 24 of Rules of the Supreme Court provide for 30 days after receipt of a petition to file an opposing brief. Under this rule, Shell would have until March 11, 1972 to file its opposing brief. The full time is needed in view of the complex nature of the decision for which review is sought, particularly if the review is to include the primary jurisdiction question[2] as presented in the Solicitor General's petition as well as the issue of the Commission's curtailment jurisdiction.

On February 15, 1972, Shell was served a copy of the Petition of United And Pennzoil For Writs of Certiorari To The United States Court Of Appeals For The Fifth Circuit, which seeks review of the same decision as is sought by the Solicitor General on behalf of the Federal Power Commission. On February 9, 1972, after the filing of the Solicitor General's motion and petitions, but prior to the filing of the United-Pennzoil petition, the Federal Power Commission issued its Opinion No. 610 in Docket No. CP71-89, *United Gas Pipe Line Company* (Appendix F to the United-Pennzoil petition). This opinion finds, *inter alia,* that the Federal Power Commission has juris-

2. The primary jurisdiction question is the second question presented in the Solicitor General's petition, relating to certificate jurisdiction over United's intrastate facilities.

diction over United's "Green System-East", which finding is in direct conflict with a finding of the Fifth Circuit in the decision for which review has been sought herein. Opinion No. 610 is the finding of primary jurisdiction which the Solicitor General contends should have preceded the Fifth Circuit decision.

Section 19(a) of the Natural Gas Act (52 Stat. 831; 15 U.S.C. § 717r) states in pertinent part as follows:

> "SEC. 19 (a) Any person, State, municipality, or State commission aggrieved by an order issued by the Commission in a proceeding under this act to which such person, State, municipality, or State commission is a party may apply for a rehearing within thirty days after the issuance of such order. The application for rehearing shall set forth specifically the ground or grounds upon which such application is based. Upon such application the Commission shall have power to grant or deny rehearing or to abrogate or modify its order without further hearing. Unless the Commission acts upon the application for rehearing within thirty days after it is filed, such application may be deemed to have been denied."

Shell is a "person aggrieved" by Commission Opinion No. 610 within the meaning of the Natural Gas Act. Shell is both a seller to, and a purchaser from, United's "Green System-East". We are now preparing an application to the Federal Power Commission for rehearing on its Opinion No. 610 to be filed before March 10, 1972. Action by the Commission thereon will have a material bearing on the primary jurisdiction issue urged to this Court for review. The certificate case (Docket No. CP71-89) was commenced on October 1, 1970 and the record was closed on July 2, 1971. The Commission's Opinion No. 610 in the certificate case was not issued until Feb-

ruary 9, 1972. The Solicitor's motion for expedition now seeks to require response to the petitions for certiorari even before applications for rehearing are filed in the certificate case. Assuming the earliest possible action by the Commission, the need for supplemental briefs to this Court concerning such action would appear a certainty if the expedited schedule requested by the Solicitor General is imposed.

The proceedings in United's curtailment case were commenced on October 26, 1970 with a petition filed in Federal Power Commission Docket No. RP71-29. Commission Opinion No. 606 was issued therein on October 5, 1971, with rehearing being denied in Opinion No. 606-A on December 3, 1971. It is now pending on review before the Fifth Circuit. The ordering paragraphs of Opinion No. 606 have never been stayed. In the action of the Fifth Circuit sought to be reviewed herein, the order dismissing the LP&L cause for injunctive relief was reversed and remanded to the District Court for further fact development on the issue of irreparable injury. Opinion No. 606 is now in effect. Even assuming arguendo that expedition is needed to protect the effectiveness of Opinion No. 606, that need for expedition does not apply to the primary jurisdiction issue.

The Solicitor General refers to nation-wide considerations as supporting the urgency for early resolution of the Commission's jurisdiction to curtail industrial sales. While we recognize these considerations as presenting very real concerns, they would at most justify expedition of the curtailment issues and not those related to United's certificate case (CP71-89). The jurisdiction of the Federal Power Commission, asserted in its Opinion No. 610, to certificate United's "Green System-East", (United's intra-

state facilities in the New Orleans area) and the decision of the Fifth Circuit that the Commission lacks such jurisdiction, do not present issues of such urgent national concern that they should be part of an expedited review requested even before applications for rehearing of Opinion No. 610 have been filed with the Commission. The Solicitor General's argument for expedition (pp. 22 and 23) refers only to the urgency for early determination of the Commission's curtailment jurisdiction over industrial sales. No reason whatsoever is advanced for expedition of the primary jurisdiction issue relating to United's intrastate facilities.

We respectfully oppose the Solicitor General's motion for expedition as being unnecessary and contrary to sound judicial administration, particularly with regard to the primary jurisdiction issue.

Respectfully submitted,

THOMAS G. JOHNSON
DAN A. BRUCE
Attorneys for Shell Oil Company

By_____
DAN A. BRUCE

February 17, 1972